



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

200722031

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

UICs: 402.08-00  
402.08-05

MAR - 6 2007

**LEGEND:**

T:EP:RA:T3

Taxpayer A:

Taxpayer B:

Date 1:

Date 2:

Date 3:

Date 4:

Date 5:

Date 6:

Date 7:

Date 8:

Date 9:

Date 10:

Company M:

Company N:

Plan X:

Estate W:

Amount 1:

Amount 2:

Amount 3:

Amount 4:

Percentage 1:

Fund A:

State U:

Dear :

This is in response to the , letter submitted on your behalf by your authorized representative, as supplemented by correspondence dated , in which you request several letter rulings as to the tax consequences flowing from the transaction described below under section 402(c) of the Internal Revenue Code ("Code"). The following facts and representations support said ruling requests.

Taxpayer A, whose date of birth was Date 1, 1931, died on Date 2, 2005 while a resident of State U having attained age 70 ½. He was survived by his wife, Taxpayer B, whose date of birth was Date 3, 1934. Thus, Taxpayer B has also attained age 70 ½.

At the time of his death, Taxpayer A was a participant in Plan X, a plan which is represented to be qualified within the meaning of Code section 401(a) and which is sponsored by Company M. On or about Date 4, 1991, Taxpayer A named Estate W as the beneficiary of his interest in Plan X. However, on or about Date 5, 2000, Taxpayer A changed his Plan X beneficiary and named Taxpayer B as the beneficiary of his Plan X account. A letter signed by a representative of Company M which accompanied this ruling request certifies that Taxpayer B was the named beneficiary of Taxpayer A's Plan X interest at his death.

On or about Date 6, 2005, Plan X distributed Amount 2 to Estate W even though Taxpayer B was Taxpayer A's named beneficiary. Amount 2 represented Amount 1, Taxpayer A's balance under Plan X, less Amount 3, the amount withheld for the payment of State U income taxes. This payment was made in accordance with Taxpayer A's Date 4, 1991, beneficiary designation which, as noted above, had been superceded.

On or about Date 7, 2006, Estate W repaid Amount 2 to Plan X. Documentation which accompanied this ruling request indicates that Amount 2 was re-credited to Taxpayer A's Plan X account on or about Date 8, 2006. Additionally, Amount 3 was also re-credited to Taxpayer A's Plan X account balance. Finally, Amount 4 representing investment gains for the period Date 9, 2005 (the date that Taxpayer A's Plan X account was debited because of the above-referenced distribution to Estate W), until Date 8, 2006 was also credited to Taxpayer A's Plan X account.

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Amount 4 represented a return of Percentage 1 which was the return earned by Taxpayer A's Fund A choice of investments. Thus, as of the date of this ruling request Taxpayer A's Plan X account has been restored to its value as of the date of Taxpayer A's death with interest.

It has been represented that a Form 1099-R, Distributions From Pensions, Annuities, retirement or Profit-Sharing Plans, IRA, Insurance Contracts, etc., was issued by Company M to Estate W with respect to the above-referenced calendar year 2005 Plan X distribution. It has also been represented that a calendar year Plan X distribution intended to comply with the requirements of Code section 401(a)(9) was made to Taxpayer A prior to his death on or about Date 10, 2005.

If the Service issues a favorable response to this ruling request, pursuant to the Date 5, 2000 beneficiary designation referenced above, Taxpayer B intends to receive a distribution of the full amount currently standing in Taxpayer A's Plan X account and roll over (except for any required distributions) the full amount of the distribution into one or more individual retirement accounts ("IRAs") described in Code section 408(a) set up and maintained in the name of Taxpayer B. Said roll over(s) will occur within 60 days of the date that Taxpayer B receives the distribution. It has been represented that the "rollover" IRA(s) will be maintained with Company N.

Based on the above facts and representations, you, through your authorized representative, request the following letter rulings:

1. That Taxpayer B, as the named beneficiary of Taxpayer A's interest in Plan X, may roll over a distribution from Plan X of Taxpayer A's date of death balance under said plan, to the extent the balance constitutes an "eligible rollover distribution", into one or more individual retirement accounts ("IRAs"), described in Code section 408(a); and
2. That with respect to Taxpayer A's Plan X interest, the 60-day "rollover" period referenced in Code section 402(c)(3) does not begin to run until said interest is received by the named beneficiary of Taxpayer A's Plan X interest who is represented to be Taxpayer B, Taxpayer A's surviving spouse.

With respect to your ruling requests, Code section 401(a) sets forth certain rules governing the qualification of employer sponsored retirement plans. Code section 501(a) provides, in relevant part, that an organization described in section 401(a) shall be exempt from taxation under Subtitle A unless such exemption is denied under sections 502 or 503.

Section 402(a)(1) provides that, except as otherwise provided in this section, any amount actually distributed to any distributee by an employees' trust described in section 401(a) which is exempt from tax under section 501(a) shall be taxable to the distributee, in the taxable year of the distributee in which distributed, under section 72 (relating to annuities).

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Code section 402(c)(1) provides that, if an employee transfers any portion of an eligible rollover distribution into an eligible retirement plan, the amount so transferred shall not be includible in income for the taxable year in which paid.

Code section 402(c)(4) provides, in relevant part, that an "eligible rollover distribution" is a distribution to an employee of all or any portion of the balance to the credit of the employee in a qualified trust; except that such term shall not include

(A) any distribution which is one of a series of substantially equal periodic payments (not less frequently than annually) made-

(i) for the life (or life expectancy) of the employee or the joint lives (or joint life expectancies) of the employee and the employee's designated beneficiary, or

(ii) for a specified period of 10 years or more,

(B) any distribution to the extent such distribution is required under section 401(a)(9), and

(C) any distribution which is made upon hardship of the employee.

Code section 402(c)(8)(B) defines an eligible retirement plan to include, an individual retirement account described in Code section 408(a), an individual retirement annuity described in Code section 408(b); a qualified trust, and an annuity plan described in Code section 403(a).

Code section 402(c)(3) provides, generally, that section 402(c)(1) shall not apply to any transfer of a distribution made after the 60th day following the day on which the distributee received the property distributed.

Code section 402(c)(9) provides, in general, that the above rollover rules of Code section 402(c) apply to the surviving spouse of a deceased employee if, after the death of such employee, a qualified plan distribution attributable to said employee is paid to the spouse.

In order to correct the Date 6, 2005 distribution made from Plan X to Estate W, which it has been represented was made to an incorrect recipient, Estate W has returned Amount 2 to the trustee of Plan X which then re-credited it to Taxpayer A's Plan X account. Additionally, Amount 3, representing State U income tax, was also re-credited to said account, and Amount 4, representing lost earnings, was credited to the account. Thus, as of the date of this ruling request, Taxpayer A's Plan X account was in the position in which it would have been absent the Date 6, 2005, distribution to Estate W referenced above. Additionally, because of the corrective actions referenced above, Plan X is in a position to distribute to Taxpayer B, who is represented to be the appropriate named beneficiary of Taxpayer A's Plan X interest, amounts due her from Plan X

pursuant to the Date 5, 2000, beneficiary designation. When received, Taxpayer B intends to roll them into one or more Code section 408(a) qualified IRAs set up in her name.

Based on the representations made with respect to this ruling request, and based on the letter signed by a representative of Company M, referenced above, which assert that Taxpayer B is the named beneficiary of Taxpayer A's Plan X interest, and because no distribution from Plan X of said interest has, as yet, been made to her, we conclude as follows with respect to your ruling requests:

1. That Taxpayer B, as the named beneficiary of Taxpayer A's interest in Plan X, may roll over a distribution from Plan X of Taxpayer A's date of death balance under said plan, to the extent the balance constitutes an "eligible rollover distribution", into one or more individual retirement accounts ("IRAs"), described in Code section 408(a); and
2. That with respect to Taxpayer A's Plan X interest, the 60-day "rollover" period referenced in Code section 402(c)(3) does not begin to run until said interest is received by the named beneficiary of Taxpayer A's Plan X interest who is represented to be Taxpayer B, Taxpayer A's surviving spouse.

This letter assumes that Plan X was/is described within Code section 401(a) at all times relevant thereto. It also assumes that the rollover IRA (or IRAs) into which the Plan x distribution referenced herein will be described in Code section 408(a). Finally it assumes the correctness of all representations made with respect thereto including, but not limited to, the representation that Taxpayer B was the named beneficiary of Taxpayer A's Plan X interest.

Please note that, pursuant to Code section 402(c)(4)(B), this ruling letter does not authorize the rollover of any amounts distributed from Plan X to Taxpayer B to the extent (if any) said amounts are required to be distributed under Code section 401(a)(9) with respect to any calendar year.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

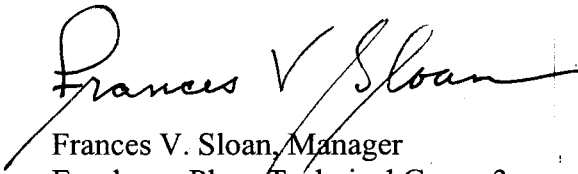
This letter is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

If you wish to inquire about this ruling, please contact \_\_\_\_\_, Esquire, (ID: \_\_\_\_\_), SE:T:EP:RA:T3, at (202) 283-\_\_\_\_\_ (not a toll-free number).

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Pursuant to a power of attorney on file with this office, copies of this letter ruling are being sent to your authorized representatives.

Sincerely yours,

  
Frances V. Sloan, Manager  
Employee Plans/Technical Group 3

Enclosures:

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Notice of Intention to Disclose, Notice 437